



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYAMIRA**  
**CIVIL SUIT NO.1 OF 2015**

**ALFRED .S. MDEIZI t/a**

**MEMICARE NURSING & MATERNITY HOME.....PLAINTIFF**

**-VERSUS-**

**NATIONAL HOSPITAL INSURANCE FUND (NHIF)....DEFENDANT**

**JUDGMENT**

The plaintiff herein Alfred Ndezi T/A Memicare Nursing & Maternity Home a medical institution and the defendant herein National Hospital Insurance Fund entered into a contract whereby the defendant had accredited the plaintiff for disbursement of medical services to its members sometime in 1995 to 2003. However in 2003 the Plaintiff accreditation was suspended by the defendant.

**PLEADINGS**

In an amended plaint dated 26<sup>th</sup> October 2005 the Plaintiff sued the defendant and sought the following prayers:-

- a. The unpaid claims as per paragraph (a) foregoing with interest at prevailing market rate.
- b. Cost of the suit and interest on (a) above

In his amended plaint the plaintiff stated that all material times to this suit his medical institution Memicare Nursing & Maternity Home was accredited declared and gazette as a hospital under the NHIF Act. That pursuant to the accreditation, declaration and gazettement of his hospital under **section 30** of the defendants Act, he provided medical and boarding services to various persons registered under the defendants Act and presented his claims to the defendant for reimbursement.

However the plaintiff stated that contrary and in total breach of the express provisions of the defendants Act and the Law of contract the defendant has refused to reimburse monies expended by the plaintiff on personally registered and medically covered by the defendant.

It is thus the Plaintiff's claim for Kshs.3,899,500 being the outstanding and unpaid claim submitted to the defendant for reimbursement to the Plaintiff under the provisions of the foresaid act.

Lastly, the plaintiff has contended that despite demand for payment and consents entered into, no payment have been made to the plaintiff.

The defendant on its part filed their written statement of defence dated 23<sup>rd</sup> November 2000. In its defence, the defendant did not deny the existence of the contract with the plaintiff but stated that it was a material condition of any approval and accreditation given to the plaintiff and that any abuse of the claims payment system would result in the cancellation of the approved status and subsequent loss of licence under the medical practitioner and Dentist Act. The defendant further denied that it acted in total breach of Act and contended that all bonafide and regular claims from the plaintiff that complied with the provisions of the Act and Rules made by the defendant's board have been duly processed and paid to the plaintiff and any claims that were not paid were rejected and reasons for rejecting were duly conveyed to the plaintiff.

The defendant further stated in their defence that plaintiff was given an opportunity to justify the rejected claims and the defendant settled the meritorious claims. Hence, the defendant stated that the Kshs.3,899,500 if any exists, and claimed by the plaintiff as being the outstanding and unpaid claims submitted to the defendant for reimbursement falls under the rejected and unjustified claims and that this does not flout any law as alleged by the plaintiff.

Thus the defendant contends that the plaintiff's claim is unmeritorious, frivolous, vexatious and an abuse of the process of the court.

Lastly, the defendant contended that there is a pending judicial **Review Application Miscellaneous Civil Application No. 118 of 2003** filed on 28<sup>th</sup> August 2003 between the same parties and filed in the High Court at Kisii which arises out of the same subject matter; pending for determination by court and it will at the appropriate time move the court to strike out this suit for being *res judicata*.

### **ORAL EVIDENCE**

This matter then proceeded to hearing by way of oral evidence PW1 was the plaintiff herein Alfred Sagwa Mdeizi. He told the court that he owed a medical institution by the name of Memicare Nursing and Maternity Home which was a medium level size hospital with about 100 beds occupancy and it covered all services that a hospital of that size covered including surgery, laboratory, minor theatre, maternity, outpatient, and inpatient services, counseling and medical outreach programme. He produced a licence from the Ministry Health dated 21<sup>st</sup> August 1995 and the same was marked as P. Exhibit 1. He also produced a licence to operate as a private medical institution and produced a copy of the same which was marked as P exhibit 2. That he applied to be affiliated to the defendant on 1<sup>st</sup> October 1998. He produced a letter from the defendant which was marked as P.Exhibit 3. That defendant in turn sent a letter addressed to the DEO MOH in Migori asking them to inspect the plaintiff's hospital. He produced the said letter which was marked as P. Exhibit 4. That MOH inspected the plaintiff's hospital on 22<sup>nd</sup> October 1994 and did a report which was produced as P. Exhibit 5. The said report approved the institution to be a member of the defendant.

He explained that a member of NHIF needs to provide medical services to patients who are members of NHIF on credit, the patient leaves the members card and identity card with the hospital then prepares a claim form in duplicate to be submitted to the defendant. He explained that a statement is attached to claim for, with a copy of the NHIF card and I/D card. That the sum claimed appears in the statement and upon payment the defendant returns the statement to the defendant.

He told the court that his problem with the defendant emanated from a letter dated 29<sup>th</sup> July 2003 which he received on 11<sup>th</sup> August 2003. The said letter suspended his institution (plaintiff Hospital) from NHIF services on allegations of submitting a number of fraudulent claims. He produced the copy of the said letter which was marked as P. Exhibit. 14. He contended that the implication of the said letter means that he was out of business and on reference to Exhibit 14 the outstanding debt was Kshs.3,895,513/=.

He further confirmed that he filed a judicial review No.114 of 2003 at Kisii Court and that in 13<sup>th</sup> August 2003 the court issued an order staying the suspension allowing him to continue claim. He produced a copy, the said order which was marked as P. Exhibit 16. That he in turn submitted claims to the defendant

and that he never received any money from the defendant despite the court order. He further stated that his advocate sent a letter to the defendant raising issue with the non compliance with the same was marked as P Exhibit 17. As a consequence of the defendant's non compliance, he filed an application for contempt of court Vide Kisii high Court Misc Application 50 of 2004 and a copy of the same was marked as P Exhibit 18. However, that when the said application came up for hearing a consent was recorded. The said consent was produced a copy of the said consent contended that to date the defendant has never implemented the consent under clause 5 thereby. However, after the expiry of (30) days his advocate did a letter to the defendant's advocate informing them of the funds due. A copy of the said letter was produced as P. Exhibit 20 and the sum due was Kshs.3,815,513.

That on 27<sup>th</sup> July 2004 both parties came to court reviving the application for contempt and the defendant's advocate Mr . Simiyu and Mr. Minda for the plaintiff consented that the outstanding debt of Kshs.3,815,517 be paid to the plaintiff within 7 (days) from that date. He produced a copy of the said consent which was marked as P. Exhibit 21. He confirmed that the said consent was not honoured. He further stated that he served the contempt application and wanted the defendant to be found guilty of disobeying orders of the court but Hon. Justice Bauni advised him to file a suit for recovery of a normal debt.

He further stated that when he compiled the list of unpaid claims and submitted it to the defendant's local office at Migori on 14<sup>th</sup> August 2009 and proceeded to serve the same in the defendant's office at Nairobi on 28<sup>th</sup> August 2003. He contended that the claims were not paid for the period from 1995 — 2002 but others were paid by the defendant. He produced the said document as P. Exhibit 23. He also stated that the summary claim had been charged by the suspense of the hospital from the defendant.

Lastly, he contended that he has never been subjected to any fraudulent investigation or charge in respect of this so called fraudulent claims as stipulated under section 25 (a) of the NHIF Act 1998.

On cross-examination he confirmed that he did not have any evidence that he had presented the claim to defendant in 1966, 1971, 1998, 1999, 2001, 2002 and 2003.

This marked the close of the plaintiff's case.

DW1 was Bii Kibet Westley a senior benefit officer with the defendant. He told the court that once a hospital is accredited by the defendant; its gazetted after which a contract is entered between the defendant and hospital. That once a patient has been admitted to hospital, the hospital must confirm that the patient is genuine contributor or dependant of contributor. That the hospital is to identify the patient using a NHIF card and number together with a national identity card or passport. That should the patient be dependant, they use birth certificate of the patient, birth notification or child welfare card /immunization card.

He further stated that the defendant's duty is to confirm whether the parties admitted are genuine i.e be surveillanced regularly at branch and regional level. That all hospitals do notification by online method (currently) but in the past surveillance team would make physical visits to all accredited hospitals. That upon conducting surveillance, there were surveillance firms being used to collect the data, and where, they suspected fraud a form or a copy would be left in the hospitals. That the surveillance normally take in- patient's name identity card or membership number the relationship of the contributor to the patient, date of admission and date of discharge. This information is then forwarded to the respective branch. He also stated that the claim from the hospital also includes the date of admission and date of discharge.

That the claims are arranged in batches of 12 and have submission forms to the defendant's branch. That once submission forms are received, the defendant starts to process the claims. That if claims raised have queries, they are put under investigations. After investigation the claim may be rejected or processed for payment. That is through a branch committee and the relevant hospital is alerted. That hospital may appeal against the rejection if there are grounds for the appeal. However, the appeal must be lodged within 90 days of the hospital being aware of the rejection. That if the hospital is aware of the rejection and does not appeal within 90 days, the claim stands rejected and the defendant does not pay rejected claims. He

further explained that if the hospital opts to appeal, the said appeal is done by way of letter to either the branch or sometimes to the Chief Executive.

He confirmed that the plaintiff was an accredited hospital with the defendant. The plaintiff applied for accreditation on 1<sup>st</sup> October 1994, inspection followed was done on 2<sup>nd</sup> November 1994 and plaintiff was given accreditation in February 1995

That the plaintiff then used to submit for claims of the patient until May 1995 when the first claims of fraud were raised. That in that month one claim was rejected while the rest were processed for payment. However the plaintiff continued to submit their claims.

That in November 1999 about 14 claims were rejected from the plaintiff's facility as most (13) were fictitious as established during surveillance. That the other (14) overlapped with another hospital hence all the (14) were rejected, and the plaintiff was accordingly informed through a letter HP/KSM/AD/200/ 7 dated 19<sup>th</sup> November 1999 which was produced as DW Exhibit -3. That after that there were numerous claims that were rejected. The said rejected claims were (23) dating from 1999- 2003. He indicated that they did not total the figure involved. The said bundle was produced as DW Exhibit 4 (a)

In reference to Exhibit 23 he stated that the claim amounted to Kshs.3, 895,513 plus another claim of Kshs 1013 and according to his list 39 claims were received and paid. However, 77 claims in the same list were rejected. He produced a list of the claims which were paid PW1- exhibit 5 and claims which were rejected PW1 Exhibit 6. He however stated that in the plaintiff's claim some of the documents were not in the list of submitted claims. He further stated that they supplied the plaintiff with the rejected claims.

In reference the plaintiffs' testimony that there were consent orders authorizing payment D Exhibit 1, he stated that claim 1468 Kshs.3, 784,355 had been paid to the plaintiff from the period running from 1<sup>st</sup> July 1998 to 25<sup>th</sup> October 2004. He produced the same as DW Exhibit 2. Furthermore, he stated that the payments paid to the plaintiff included cheque numbers and dates of payment and the creditor where the cheque was paid to. That according to their documents, further payment was made of Kshs. 338,500 by cheque. He produced DW-8 as evidence of further payment.

According to him all genuine claims were paid as established in D Exhibit 2 and D. Exhibit 8. That DW Exhibit 6 was rejected. That since the plaintiff did not appeal the same stood rejected. That in their list Exhibit D5 they appear in PW 23 as not having been paid.

He further stated that the judicial review application filed by the plaintiff was dismissed in 3<sup>rd</sup> February, 2010. They produced the **Misc. Kisii Application No. 114 of 2003** AS DW Exhibit 9.

Lastly he stated that to the best of his knowledge, they had processed all the genuine claims to the plaintiff hence the defendant does not owe the plaintiff anything. He thus urged the court to dismiss the plaintiff's case with costs.

On cross-examination he stated in reference to Exhibit 4 (a) that there is no evidence that the committee looked at it and determined the letter. He also confirmed that Exhibit PW 23 were not received by the defendant.

On consent he stated that he would not recall whether the defendant discussed the consent. He also reiterated that in a consent dated 27<sup>th</sup> July 2004, the defendant pledged to pay Kshs. 338,320 DW-8. He also stated that the plaintiff was never arrested for fraud. That in claim 4 (a) No.2020600464 the same was rejected in February 2003 because surveillance confirmed that patient was not a member of NHIF. That the plaintiff confirmed the rejection and the claim was submitted 12<sup>th</sup> June 2002 as shown in DW-7.

On re-examination he stated that when one files an appeal they should indicate the grounds of appeal.

This marked the close of the defendant's case.

Having considered the plaintiff's amended plaint, the defendant's written statement of defence, the oral evidence presented in court and the written submissions the only issue that was presented before this court for determination is whether the plaintiff has proved on a balance of probability unpaid claims against the defendant.

It is not disputed that the plaintiff used to present claims between the period it was gazetted 1993 to 2003 when it was suspended. The plaintiff has now sued the defendant for a sum of Kshs.3,895,513 which he alleged has not been paid by the defendant for the period of between the years 1995 -2002. The plaintiff on its part produced a list of the claims (P. Exhibit 23) indicating the same had not been paid by the defendants.

The defendant on its part produced D Exhibit 5 and D. Exhibit 6 which are lists of claims reflecting claims received by the defendant and paid and claims rejected respectively. The witnesses explained that claims in the lists were claims which were produced by the plaintiff as P. Exhibit 23 which the plaintiff has stated are claims which have not been paid and which he has sued for.

It is the plaintiff's submission that the defendant has not indicated which claims in P. Exhibit 23 were paid and which cheques were rejected apart from D. Exhibit 5 and D. Exhibit 6. During cross-examination of the plaintiff, confirmed that he did not have proof that he presented any claims to the defendant in four years i.e 1996, 1997, 1998 & 1999 and 2002. However a look at P.Exhibit 23 confirms that the plaintiff had indicated claims for the said years starting from page 1-6 and pages 19 -34 which are infact claims for the years 1998, 1997, 1996 and 1995. I have also noted that these are some of the claims the defendants witness stated that the same were not in the defendant's database according to the defendant's evidence which was not rebutted by the plaintiff. It is also my observation that D Exhibit 5 contains claims that were presented and paid and the said claims were rejected at page 11 and 12 of P. Exhibit 23. On the other hand ,page 16,17 and 8 contain claims in D. Exhibit 6 which are claims that were presented but rejected.

There was also the issue of consent which was entered into between the parties in 2004. I note that the defendant has presented evidence to the effect that payments were made after the said consent as evidenced by D. Exhibit 4 a statement from the defendant showing payments made between 1<sup>st</sup> July 1998 and 25<sup>th</sup> October 2004 which in my humble view confirms that the defendant complied with the consent order filed in court.

The defendant has further exhibited a statement as D Exhibit 8 which contains payments from 1<sup>st</sup> August 2003 to 31<sup>st</sup> December 2005. Although the plaintiff disapproved the fact that payments were made to him, he failed to bring his account statement confirming that he did not bank the cheque as stated in D. Exhibit 2 and 8.

It is trite law that he who alleges has to prove and a party is bound by its pleadings. The plaintiff discharged this duty by his P exhibit 23. The defendant in its defense produced a list that indicated the claims which were presented and paid and those that were not paid. The defendant has further even presented D. Exhibit 8 which contains claims which were not contained in P. Exhibit 23 but were paid after the consent of 1<sup>st</sup> June 2004.

Therefore in my humble view, the defendant had proved on a balance of probability that it paid the outstanding claims and the only ones remaining are rejected claims which the plaintiff in my view did not bother to appeal against. The plaintiff's contention that he was unaware of any rejected claims is thrown out of window by the defendants D. Exhibit 7. It is my finding that therefore the plaintiff has failed to prove his case on a balance of probability that the defendant owes him the amount claimed hence I hereby dismiss the plaintiff's amended plaint with costs to the defendant.

**Dated and delivered at Nyamira this 30<sup>th</sup> day of September 2016.**

**C.B.NAGILLAH**

**JUDGE**

**In the presence of :-**

Kerario Marwa(absent) for the Appellant/Plaintiff

Nyawencha hold brief for Madam Onyango for the Respondent/Defendant

Omayio Court Clerk